making the breach of them criminal.[13] The contracts of sailors are so treated as being "historical exceptions," [14] and the public interest of to-day should be as potent as that of past ages out of which the exception grew. So statutes making criminal the abandonment of locomotives [15] seem constitutional. It is evident, however, that such legislation will be supported only in extreme instances, and there appears to be no such policy in favor of the statute in the principal case as to prevent its overthrow.[16]

PLURALITY OF VOTES CAST IN AN ELECTION FOR A DISQUALIFIED PERSON. — The rule is universal that if a plurality of votes in an election is cast for a person who is incapable of holding office, without notice to the electors of his disqualification, such votes may not be treated as nullities, but are effective to prevent the election of the candidate having the next highest number.[1] As to what notice will change such a result, the rule in England differs from that in this country. The present English law is that if the elector is chargeable with knowledge of the facts creating the disqualification, he is presumed to know the law, and his vote is thrown away.[2] And this is true even where it is doubtful whether the facts known do create a disqualification,[3] or where the notice given is not such as necessarily to command belief.[4] The English rule, however, had its origin in cases of elections in which the voting was *vivâ voce*, the number of voters small, and their knowledge of the candidates' qualifications easily ascertainable.[5] It is obviously ill-adapted to the conditions of manhood suffrage in this country and has been applied in only one [6] or possibly two [7] states. The most frequently quoted statement of our law is the following: "The existence of the fact which disqualifies, and of the law which makes that fact operate to disqualify, must be brought home so closely and so clearly to the knowledge or notice of the elector, as that to give his vote therewith indicates an intent to waste it." [8]

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[13] *Cf.* Farnham *v.* Pierce, 141 Mass. 203; County of McLean *v.* Humphreys, 104 Ill. 378. See FREUND, POLICE POWER, § 452.

[14] Robertson *v.* Baldwin, *supra*. See 10 HARV. L. REV. 515; 13 *id.* 305.

[15] N. J. GEN. STAT. (1895), 2696; DEL. REV. CODE (1893), 928.

[16] For a discussion of a different sort of "peonage law," see 17 HARV. L. REV. 121.

[1] The King *v.* Bridge, 1 M. & S. 76; The Queen *v.* Hiorns, 7 A. & E. 960; Saunders *v.* Haynes, 13 Cal. 145; Commonwealth *ex rel.* McLaughlin *v.* Cluley, 56 Pa. St. 270.

[2] Trench *v.* Nolan, Ir. R. 6 C. L. 464. See Drinkwater *v.* Deakin, L. R. 9 C. P. 626.

[3] Beresford-Hope *v.* Lady Sandhurst, 23 Q. B. D. 79.

[4] Tavistock Case, 2 P. R. & D. El. Cas. 5; Cork County Case, K. & O. El. Cas. 391; in which the notice of the candidate's disqualification was circulated by his rival candidate. The cases of contested elections to Parliament, of which the two cases cited are examples, do not form, in all respects, a consistent body of law, but practically all of them seem to recognize this form of notice as sufficient and proper. Dissatisfaction with such a rule has, however, occasionally been expressed. Second Clitheroe Case, 2 P. R. & D. El. Cas. 276; Second Cheltenham Case, 1 P. R. & D. El. Cas. 224.

[5] The King *v.* Hawkins, 10 East 211; Rex *v.* Foxcroft, 2 Burr. 1017; Fife Case, 1 LUDERS, ELECTIONS, 455.

[6] Gulick *v.* New, 14 Ind. 93; State *ex rel.* Clawson *v.* Bell, 169 Ind. 61; the latter of which qualifies other Indiana cases which contained language making notice of the disqualification unnecessary.

[7] Hatcheson *v.* Tilden, 4 Har. & McH. (Md.) 279; an early *nisi prius* decision.

[8] People *ex rel.* Furman *v.* Clute, 50 N. Y. 451. This decision is clearly the law in

A recent case held the next highest candidate elected where a plurality of the votes was cast for a man who was known by most of the voters to have died ten days before the election, but under the belief, induced by reports widely circulated, that if his name secured a plurality, a vacancy would be created which could be filled by another man of his political beliefs. *State ex rel. Bancroft* v. *Frear*, 128 N. W. 1068 (Wis.). The case thus raises the question whether, in the rule as above quoted, the essential feature is the knowledge by the elector of facts known to disqualify, or the attitude of the elector in acting "so in opposition to his own better knowledge, that he has no right to complain of the loss of his franchise." [9] Here the former element was present, but the latter lacking. And it would seem that the latter is the essential feature. It has been held, though the question has been seldom raised, that courts cannot presume a willingness to waste a vote from the mere fact that the voter had notice that his candidate was dead [10] or ineligible.[11] And it is contrary to republican principles that a man should be declared elected whom a plurality of the electors have refused to endorse. Probably, the action of the plurality must be one of affirmative choice and not merely of dissent, and it might well be conceded that if the disapproval of the qualified candidate were expressed by votes for "a stick or a stone or for 'the man in the moon,'" as suggested by the opinion in the principal case, such disapproval would not be effective to prevent his election. But in the principal case a plurality of the voters, by reasonable, concerted action, did indicate an affirmative choice, either for the dead man or for a man of his political beliefs. It would seem a fairer decision, as more expressive of the will of the voters, that, when the vacancy could not be filled as expected, there had been no election.

EQUITABLE RELIEF FOR MISTAKE OF LAW. — Considerable uncertainty as to the scope of the jurisdiction of equity to give relief because of mistake, has arisen from a misapplication of the maxim that ignorance of the law excuses no one. Although several earlier decisions had denied its applicability to suits in equity,[1] Lord Ellenborough made it the basis of a decision against the recovery of payments made under a mistake of law, on an insurance policy.[2] Since then it has often been stated as a general rule that mistake, in order to be a ground for equitable relief, must be of fact and not of law; [3] but this rule has many exceptions. Thus

this country. Barnum *v.* Gilman, 27 Minn. 466; Gill *v.* Mayor and Aldermen of Pawtucket, 18 R. I. 281.

[9] People *ex rel.* Furman *v.* Clute, *supra.*

[10] State *ex rel.* Herget *v.* Walsh, 7 Mo. App. 142.

[11] Ransom *v.* Abbott, Taft, Senate Election Cases, 338; a case of disqualification under the Fourteenth Amendment, in which both the disqualifying fact and the law affecting it must have been well known to most of those voting. One ground for the decision was that there was a chance that one so disqualified might have his disabilities removed. See Barnum *v.* Gilman, *supra.*

[1] Lansdowne *v.* Lansdowne, 2 Jac. & W. 205; Simpson *v.* Vaughan, 2 Atk. 30.

[2] Bilbie *v.* Lumley, 2 East, 469.

[3] Bentley *v.* Whittemore, 18 N. J. Eq. 366; Fowler *v.* Black, 136 Ill. 363; Clapp *v.* Hoffman, 159 Pa. St. 531. See Hunt *v.* Rousmaniere, 8 Wheat. (U. S.) 174, 1 Pet. (U. S.) 1; 2 POMEROY, EQUITY JURISPRUDENCE, § 842; 1 STORY, EQUITY JURISPRUDENCE, § 111 *et seq.*